

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

APR 06 2020

David J. Bradley, Clerk of Court

Robert Alan Fratta, Petitioner

X

v.

X

CIVIL ACTION No. 4:13-cv-03438

Lorie Davis, Respondent

X

3rd AMENDMENT TO MOTION FOR RELIEF FROM JUDGMENT

Comes now the Petitioner, Robert Alan Fratta, and files this 3rd amendment to his Dockets 114-116 Rule 60 motion for relief from his unlawful judgment. Following is another "Error of Law" to be added and considered as II.A.2(1) and read as follows:

- 1) Failed to apply the extremely relevant case of Planter v. Texas, 9 S.W. 3d 156 into consideration during her assessment of the legal insufficiency of the evidence. Planter got acquitted on the legal insufficiency of the evidence due to a material variance between the indictment charge wording and proof at trial, which is precisely what occurred in Fratta's case. Ironically, Planter was convicted of soliciting to kill Fratta, and Fratta is mentioned throughout. But what's equally important as the majority Opinion, is Judge Keller's dissent. In it she gives a hypothetical scenario of Planter being indicted as a sole actor for killing Fratta and claims the evidence can show he got someone else to kill Fratta and a law of parties scenario can be added into the jury charge so he can be convicted that way instead. That is exactly what did occur in Fratta's case. But the CCA majority REJECTED that argument by Keller in their footnote 6. Not



only did the majority not adopt Keller's viewpoint in the Opinion, but even the other 2 dissenting judges refused to adopt it. Keller stood alone on that clear violation of Notice, Due Process, and State and case laws. This Planter case is a ruling from the CCA which Fratta has been citing in his pro se filings since direct appeal - that directly addresses and resolves the matter that NO LAW OF PARTIES CAN BE ADDED TO AN INDICTMENT COUNT WHICH CHARGES SOMEONE AS ACTING ALONE. Therefore it was unlawful to have added the law of parties to Fratta's last indictment count in his jury charge, and a hypothetically correct jury charge MUST be applied which omits any law of parties wording - and cites only the indictment wording. Since Fratta was specifically convicted on that unlawful law of parties addition to that last count, and Judge Harmon specifically upheld Fratta's conviction on that unlawful addition, the only REMEDY to this miscarriage of justice is through this Rule 60 filing commencing in docket 114. And that remedy, like Planter, is for Fratta to be acquitted and released due to the evidence being legally insufficient, especially under a fatal/material variance.

That concludes what needs to be amended into Fratta's FRCP Rule 60 motion for relief from his judgment - which starts from docket 114 and has 2 prior amendments, the last of which was mailed/filed from prison on 3/18/20.

Submitted by:



Robert Alan Fratta  
Polunsky Unit, #999189  
3872 FM 350 South  
Livingston, TX 77351

Mailed/Filed: 3/23/20



Dear Clerk Bradley,

3/22/20 (Mailed 3/23/20)

Enclosed is my 3rd amendment to my motion for relief from my judgment.  
Please scan in onto my docket and place it in my files for Judge Hanen to rule  
on.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Fratta'.

Robert A. Fratta

Case No. 4:13-cv-03438



Robert A. Forth  
Polanski Unit, # 999189  
3812 FM 350 South  
Livingston, TX 75450  
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5401 Bob Casey U.S. Courthouse  
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